

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 11 ALBUQUERQUE / BERNALILLO COUNTY AIR QUALITY CONTROL BOARD
PART 20 FUGITIVE DUST CONTROL

20.11.20.1 ISSUING AGENCY: Albuquerque/ Bernalillo county air quality control board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.
[20.11.20.1 NMAC - Rp, 20 NMAC 11.20.I.1, 3/1/04]

20.11.20.2 SCOPE:

A. This part is applicable to all sources of fugitive dust in Bernalillo county, including paved and unpaved roadways, rights-of-ways and lots.

B. Exempt: This part does not apply to sources within Bernalillo county that are:
(1) located on Indian lands over which the Albuquerque/Bernalillo county air quality control board lacks jurisdiction; and

(2) hard rock mining pits and operations contained within the mining pit and permitted pursuant to State of New Mexico Mining Act. For the purposes of this part, sand and gravel mining operations are not exempted; and

(3) emergency maintenance operations that are intended to address an imminent threat to property or persons. However, reasonably available control measures must be employed once the emergency has been addressed, if appropriate, and a report of all activities shall be filed with the department no later than 10 days after the incident has been concluded and the department shall determine if additional action, including a permit application submittal, is required before further non-emergency activities at the site; and

(4) ongoing stationary source operations that require permits pursuant to 20.11.41 NMAC or 20.11.42 NMAC and produce fugitive dust as defined in this part are exempt from obtaining a fugitive dust control permit and paying fees due under this part, but all construction at a stationary source site, whether it involves new construction or a site modification, is subject to this part.

C. Exempt for three years: The following eight sources of fugitive dust in Bernalillo county shall be exempt from the requirements of this part for three years from the effective date of this part. Before the three-year exemption expires, the board shall hold a hearing that includes a review of an emissions inventory of the eight sources and other significant sources of fugitive dust in Bernalillo county and decide if the exemptions shall be continued. If one or more of the three-year exemptions expire, the board shall also review the fugitive dust control fees to determine if they are adequate to support the fugitive dust control program.

(1) Areas zoned for agriculture and used for growing a crop; and
(2) bicycle trails, hiking paths, and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles; and

(3) unpaved roadways serving six residential dwellings or fewer; and
(4) unpaved roadways less than one-quarter mile in length that are not short-cuts; and
(5) unpaved roadways on private easements serving residential uses that are in existence at the time this part becomes effective; and

(6) unpaved roadways on United States department of agriculture forest service or United States department of interior park service lands if the roadways are more than one-quarter of a mile from an occupied residence; and

(7) lots occupied by dwellings used solely for residential purposes or solely for non-commercial livestock operations smaller than three quarters of an acre, not including lots smaller than three-quarters of acre used for other purposes; and

(8) unpaved roadways within properties used for ranching and unpaved roadways within properties owned or controlled by the United States department of energy or department of defense. However, this exemption only applies if the public does not have motor vehicle access to the roadways.

[20.11.20.2 NMAC - Rp, 20 NMAC 11.20.I.2, 3/1/04]

20.11.20.3 STATUTORY AUTHORITY: This part is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance; Bernalillo county Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4.

[20.11.20.3 NMAC - Rp, 20 NMAC 11.20.I.3, 3/1/04]

20.11.20.4 DURATION: Permanent.
[20.11.20.4 NMAC - Rp, 20 NMAC 11.20.I.4, 3/1/04]

20.11.20.5 EFFECTIVE DATE: March 1, 2004, unless a later date is cited at the end of a section.
[20.11.20.5 NMAC - Rp, 20 NMAC 11.20.I.5, 3/1/04]

20.11.20.6 OBJECTIVE: To ensure that all persons conducting active operations that result in disturbed surface areas or involve bulk material handling use reasonably available control measures or other effective measures on an ongoing basis to prevent or abate injury to human health and animal and plant life and to prevent or abate unreasonable interference with public welfare, visibility and the reasonable use of property.
[20.11.20.6 NMAC - Rp, 20 NMAC 11.20.I.6, 3/1/04]

20.11.20.7 DEFINITIONS: In addition to the definitions in this section, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this part shall govern.

A. “Active operations” means any anthropogenic activity that is capable of generating, or generates fugitive dust, including but not limited to: bulk material storage, handling or processing; earth moving; soil or surface disturbance (e.g. discing, trenching, blading, scraping, clearing, grubbing, topsoil removal); construction, renovation, or demolition activities; movement of motorized vehicles on any paved or unpaved roadway or surface, right-of-way, lot or parking area; or the tracking out or transport of bulk material onto any paved or unpaved roadway.

B. “Anthropogenic” means human caused changes in the natural or built condition of the environment.

C. “Bulk material” means sand, gravel, soil, aggregate or any other inorganic or organic solid material capable of creating fugitive dust.

D. “Construction activity” means any activity preparatory to or related to building, altering, rehabilitating, demolishing or improving property that results in a disturbed surface area, including but not limited to grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

E. “Crop” means an agricultural plant harvested for consumption, utilization or sale.

F. “Disturbed surface area” or “surface disturbance” means the natural or manmade area of the earth’s surface that, as a result of anthropogenic activity, results in a release of fugitive dust or serves as a source of transported material.

G. “Division” means the city of Albuquerque air quality division or its successor agency.

H. “Dust suppressant” means water, hygroscopic materials, or non-toxic chemical stabilizers used to reduce or control fugitive dust emissions.

I. “Earth moving activity” means grading, cutting, filling, soil disturbance (e.g. discing, trenching, blading, scraping, clearing, topsoil removal, grubbing); soil mulching, loading or unloading of dirt or other bulk materials, including adding to or removing from open storage piles of bulk materials.

J. “Fugitive dust” or “dust” means organic or inorganic particulate matter in quantities and of a duration that may with reasonable likelihood injure human or animal health or plant life, reduce safe visibility, cause property damage, or degrade visibility. Water vapor, steam, or particulate matter emissions emanating from a duct or stack of process equipment are not fugitive dust.

K. “Fugitive dust control permit” or “permit” means a permit approved by the department and issued pursuant to this part that contains an approved fugitive dust control plan that allows the beginning of active operations when the permit is signed by an authorized department representative.

L. “Fugitive dust control plan” or “plan” means the portion of the permit application that details any reasonably available control measures and other effective measures the permit applicant commits to use to reduce the quantity of fugitive dust and transported material leaving the property or area under the control of the permittee in order to prevent a violation of the national ambient air quality standards (NAAQS) and to meet the objective of this part, including contingency fugitive dust control measures that shall be an applicable requirement of any fugitive dust control permit.

M. “High wind event” means a time period of five consecutive minutes with an average wind speed of 30 miles per hour (high wind event threshold level) or higher.

N. “High wind event threshold level” or “threshold level” means a five-minute-averaged wind speed level of 30 miles per hour or more that is used to determine a high wind event.

O. “Inactive disturbed surface area” means any disturbed surface area on which active operations have been suspended.

P. “Large area disturbance” means a project or development, including areas used for storage of bulk material, buildings or construction materials, machinery or vehicles for which active operations have been conducted on more than 25 acres of total land area.

Q. “Open storage pile” means the accumulation of any bulk material that is not fully enclosed, covered or chemically stabilized.

R. “Owner or operator” means any person who owns, leases, operates, controls, or supervises a source that directly or indirectly produces or is capable of producing fugitive dust.

S. “Parking lot” or “parking area” means a location where motor vehicles routinely park whether the area is zoned for parking or not.

T. “Paved” or “paving” or “paved roadway” means asphalt, recycled asphalt, concrete or asphaltic concrete, or combinations thereof, that covers a surface traveled or used by motor vehicles.

U. “Permittee” means any person, owner or operator and all legal heirs, successors, and assigns who has applied for and obtained an approved fugitive dust control permit by the department per this part.

V. “Person” means any individual, firm, partnership, corporation, association, organization, company, joint stock association, business trust, owner, or body politic, including, a municipality, local, state and federal government agency or political subdivision, and shall include any employee, officer, operator, contractor, supplier, installer, user, leaseholder, trustee, receiver, assignee or other person acting in a similar representative capacity with the authority to control transported material or emissions of particulate matter generated at a disturbed surface area or generated by activities associated with a disturbed surface area.

W. “Privately-owned” means real property that is not wholly or partially owned, leased or otherwise controlled by a federal, state or local government or governmental agency or political subdivision.

X. “Programmatic permit” means a fugitive dust control permit valid for up to five years issued to a permittee that performs routine maintenance or routine ongoing active operations on land or at facilities, which does not include full depth reconstruction of a roadway or substantial removal and replacement of a manmade facility.

Y. “Property line” means the exterior boundary of real property, as indicated by plats, plot maps or other indication of ownership limits.

Z. “Publicly-maintained” means under the jurisdiction of, or maintained by any federal, state, or local government or governmental agency or political subdivision.

AA. “Publicly-owned” means real property that is wholly or partially owned, leased or otherwise controlled by a federal, state or local government or governmental agency or political subdivision. Publicly-owned land includes easements and rights-of-ways, streets, roadways, sidewalks, alleys and other public ways, parks, irrigation and drainage facilities, and any other publicly controlled real property that can be the source of fugitive dust.

BB. “Reasonably available control measure” or “control measures” means any device, system, process modification, apparatus, technique, work practice or control measure, or combination thereof, that mitigates fugitive dust and may be included in this part or any other regulatory control program that affords equivalent protection of a disturbed surface, whether or not the purpose of the control measure is to mitigate dust or to meet some other requirement of this part or any other statute or regulation. Any effective control measures, including those in 20.11.20.23 NMAC may be used.

CC. “Responsible person” or “responsible official” means the person designated in a permit who is responsible for complying with the permit, plan and this part to the extent specified in the permit.

DD. “Short cut” means a roadway used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway.

EE. “Silt” means any bulk material that passes through a 200-mesh screen using the ASTM-C-126 method, or most current ASTM (American society for testing and materials) method. Material that will pass through a 200-mesh screen is 74 microns or less in size.

FF. “Source” or “source of fugitive emissions” means the origin of fugitive dust emissions.

GG. “Stabilized” or “stabilization” means the ongoing practices sufficient to prevent a violation of the national ambient air quality standards by meeting the objective established in Section 20.11.20.6 NMAC of this part.

HH. “Stop work order” means an order issued by the department pursuant to the provisions of this part requiring a person to cease active operations.

II. “Track-out” or “tracking” means bulk material deposited by a motor vehicle or vehicles upon an unpaved or paved publicly or privately owned roadway and that can become airborne due to mechanical or wind action.

JJ. “Transported material” means particulate matter transported by wind, water or other action that, once deposited, can become airborne due to mechanical or wind action.

KK. “Unpaved roadway” means any unpaved route traveled by a motorized vehicle.

LL. “Visible fugitive dust” means anthropogenic particulate matter emissions from a source resulting in particulate matter emissions that can be detected by the human eye or a detection system approved by the department. Visible fugitive dust can be an indicator of PM₁₀.

MM. “Visible fugitive dust detection method” means the method described in Section 20.11.20.25 NMAC of this part, which is one method used to determine compliance with this part.
[20.11.20.7 NMAC - Rp, 20 NMAC 11.20.I.7, 3/1/04]

20.11.20.8 VARIANCES: Any person may request a variance from this part in accordance with 74-2-8 NMSA 1978, Variances. The variance procedures of 20.11.7 NMAC shall not apply to this part.
[20.11.20.8 NMAC - Rp, 20 NMAC 11.20.I.8, 3/1/04]

20.11.20.9 SAVINGS CLAUSE: Any amendment to Fugitive Dust Control, 20.11.20 NMAC, which is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance, or prior versions of 20 NMAC 11.20 and 20.11.20 NMAC, Airborne Particulate Matter, or a permit. Prosecution for a violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.
[20.11.20.9 NMAC - Rp, 20 NMAC 11.20.I.9, 3/1/04]

20.11.20.10 SEVERABILITY: If any section, subsection, sentence, phrase, clause or wording of this part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of this part.
[20.11.20.10 NMAC - Rp, 20 NMAC 11.20.I.10, 3/1/04]

20.11.20.11 DOCUMENTS: Documents incorporated and cited in this part may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.
[20.10.20.11 NMAC - Rp, 20 NMAC 11.20.I.11, 3/1/04]

20.11.20.12 GENERAL PROVISIONS:

A. Each person shall use reasonably available control measures or any other effective control measure to prevent a violation of the national ambient air quality standards and meet the objective established in 20.11.20.6 NMAC, whether or not the person has been issued a fugitive dust control permit. No person shall allow fugitive dust, track out, or transported material from any active operation, open storage pile, paved or unpaved roadway or disturbed surface area, or inactive disturbed surface area to be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust will: 1) adversely affect the health, public welfare or safety of the residents of Bernalillo county; or 2) impair visibility or the reasonable use of property; or 3) be visible longer than a total of 15 minutes in any one hour observation period using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method approved in writing by the department. To mitigate fugitive dust, all inactive disturbed surface areas must be stabilized and maintained in stable condition by the owner, operator, or person responsible for maintenance of the disturbed surface. Failure to comply with this subsection shall be a violation of this part.

B. Failure to comply with a fugitive dust control permit term or condition shall be a violation of this part.

C. The department may be asked to document and provide any evidence of the alleged property damage caused by fugitive dust and the department may make such documentation available to all parties involved in a property damage dispute. Prior to issuing a permit authorizing commencement of active operations, the department shall document the conditions of the properties that are closest to the property subject to the permit and any other properties the department believes are appropriate. The documentation may be in the form of photographs in electronic or hard copy formats or video recordings. The documentation will be maintained by the department for

one year after completion of the permitted project. A condition of any permit issued shall be a requirement to remedy damage to real properties caused by a violation of the permit.

D. A person whose violation of this part results in fugitive dust being deposited upon land beyond the limits of the permitted area shall take all actions necessary to remedy damage caused by a violation proven with credible evidence. Such remedies may include, but not be limited to, compensation, removal of the fugitive dust and/or repair of any damage after obtaining permission from property owners or operators before doing any work on the damaged property. It shall be a separate violation of this part to fail to remove the fugitive dust and repair the damage as specified in the written schedule or any extension agreed to by the person and the damaged property owner. If the parties cannot agree to a schedule, the department may establish deadlines and failure to comply with the deadlines shall be a separate violation of this part. No violation will occur if the failure to perform the corrective action is for reasons beyond the control of the person performing the work including without limitation acts of God or government preemption in connection with a national emergency or if the allegedly damaged property owner refuses to grant reasonable permission and access to conduct the remediation activities.

E. Reserved.

F. Each person must comply with all applicable provisions of the Clean Air Act, the New Mexico Air Quality Control Act, joint air quality control board ordinances, regulations of the board, and permits issued by the department.

[20.11.20.12 NMAC - Rp, 20 NMAC 11.20.II.1, 3/1/04]

20.11.20.13 EXISTING SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL PLANS/PERMIT REQUIRED:

A. Surface disturbance/demolition permits valid at the time this replacement Part 20 became effective shall remain in effect until the earlier of the expiration date of the surface disturbance/demolition permit or sign-off of the surface disturbance/demolition permit by the department as "project complete." Any renewals, extensions or modifications of existing permits that involve expansion of the disturbed area or modification of the approved plan covered by the existing permit shall comply with the requirements of Part 20, Fugitive Dust Control, including but not limited to payment of the fees required by this part.

B. Any person responsible for sloped (i.e. slopes having a steepness of three-to-one or steeper) and bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood control facilities subject to routine maintenance or repair, sedimentation and water erosion shall apply for a variance, a programmatic permit as authorized by Subsection C of 20.11.20.13 NMAC below, or a large-scale interim status permit set out in Subsection D of 20.11.20.13 NMAC below if the person does not elect to file an application and obtain a new disturbance area permit under 20.11.20.14 NMAC.

C. Programmatic permits covering ongoing routine maintenance of any facilities that exist on the effective date of this part at single or multiple locations may be approved by the department. Programmatic permits are issued to address work activities that result in similar earth moving or surface disturbance activities and utilize similar fugitive dust abatement strategies. Programmatic permits are valid for up to five years and permittee shall pay an annual fee for each year covered by the programmatic permit. Receipt by the department of the annual fees shall result in an automatic renewal of the programmatic permit. A new permit application shall be required every five years or earlier if the surface disturbance activities or fugitive dust abatement strategies are modified.

Programmatic permits shall follow the processing requirements of Subsection C or D of 20.11.20.14 NMAC of this part below, as appropriate.

D. Large scale interim status permits shall automatically be granted to all persons who are responsible for, in control of, or have a right of entry pursuant to an easement, permit, license, or right of way for 100 miles or more of unpaved roadways or easements on the effective date of this part and who file a declaration of eligibility within six months of the effective date of this part. A person may withdraw the declaration at any time and terminate all responsibilities under Subsection D of 20.11.20.13 NMAC. If a declaration is withdrawn, the person withdrawing the declaration shall comply with all other applicable requirements of 20.11.20 NMAC. The person issued a large scale interim status permit shall not be subject to enforcement under this part if the person has filed a declaration of eligibility consistent with this section and, within 90 days of filing the declaration, has paid the applicable programmatic permit fee required by 20.11.2.15 NMAC. The declaration shall include an agreement to the following conditions:

(1) within one year of the effective date of this part, the person shall undertake an inventory of all unpaved roadways and easements and shall submit that report the department and the board;

(2) within two years of the effective date of this part, the person shall develop a compliance plan with the written approval of the department that sets out a strategy (hereafter "compliance plan") to permanently stabilize

the existing unpaved roadways and easements using any reasonably available control measures identified in this part or any other effective control measure that is required under any other statute or regulation, or any other effective control measure devised by the person responsible for these disturbed surfaces;

(3) the compliance plan shall set out a mandatory schedule for permanent stabilization of existing unpaved roads and easements, which shall be completed within no more than 10 years from the effective date of this part;

(4) annual progress reports regarding implementation of the compliance plan shall be submitted to the department and the board documenting the actions taken, due diligence to pursue actions, delays, and explanations of any missed deadlines;

(5) the compliance plan shall be updated annually, and extensions to the approved schedule may be approved by the department. Extensions shall only be granted for a two-year period and only upon a showing of diligent action to achieve compliance; each two-year extension must be applied for separately and only the amount of time necessary to achieve compliance shall be approved by the department if less than a two-year period is required to achieve a mandatory deadline; the department shall grant only three two-year extensions. The board may only grant additional extensions upon a request and public hearing before the board;

(6) if the person fails to comply with this section or upon review of the annual reports and compliance plan updates, the department determines that the person has failed to achieve a reasonable rate of progress based upon diligent actions, the enforcement provisions of 20.11.20.27 NMAC shall be pursued until reasonable corrective actions are developed to address the failure; if the department accepts the corrective actions a new compliance plan shall be approved by department; and a copy of the new compliance plan and full report shall be made to the board.

E. No signs or photographic documentation shall be required for the permits or activities covered in Section 20.11.20.13 NMAC. Appropriate permit documentation shall be determined by the department.
[20.11.20.13 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.14 NEW SURFACE DISTURBANCE AREAS; FUGITIVE DUST CONTROL PLANS; PERMITS REQUIRED:

A. Any person who does not elect to obtain a fugitive dust control permit pursuant to Section 20.11.20.13 NMAC or who does not qualify for a fugitive dust control permit under Section 20.11.20.13 NMAC and plans to conduct new active operations that will disturb three-quarters of an acre or more must comply with either Subsection C or D of 20.11.20.14 NMAC. Any person may voluntarily apply and pay for a permit pursuant to Subsections C and D of 20.11.20.14 NMAC and shall comply with the requirements of the permit and this part. The application shall include a fugitive dust control plan that may utilize reasonably available control measures to mitigate fugitive dust to meet the objectives of this part. No operations shall commence until an authorized department representative signs the permit. The permit shall consist of the approved permit application form, the fugitive dust control plan, any appended documents, and any conditions attached to the permit by the department.

B. The permittee shall be responsible for complying with the terms of a permit unless the department approves a transfer of the permit or issues a new permit for the active operation to a new permittee. In addition, the department may approve, in writing, an amendment to any permit that adds or changes the designated responsible person who has agreed in writing to be responsible for complying with the permit, to the extent specified in the permit. If the permittee fails to comply with the provisions of this part, the owner or operator, if different from the responsible person or permittee, shall be responsible for compliance with the permit. If a portion of the active operations is legally transferred or sold as a single-occupancy residence lot, the new owner of that lot is responsible for compliance with this part unless exempt, and the permittee is no longer responsible for control of fugitive dust originating from the residential lot.

C. Any person who plans to conduct active operations that will disturb at least three-quarters of an acre, or 32,670 square feet, but no greater than 25 acres of total land surface shall submit a fugitive dust control permit and fugitive dust control plan application to the department no fewer than 10 working days before beginning active operations. If different from the permittee, the permittee shall designate a responsible person for the permit application and the activities. Before a responsible party may be liable for violations of the permit or this part, the responsible person must agree in writing to accept responsibility for compliance with the permit and this part and shall be the first person contacted by the department to resolve a violation of the permit or this part.

D. Any person who plans to conduct active operations that will disturb more than 25 acres of total land surface shall submit a fugitive dust control permit application to the department regarding the proposed activity no fewer than 20 working days before beginning active operations. If different from the permittee, the permittee shall designate a responsible person for the permit application and the activities. Before a responsible party may be

liable for violations of the permit or this part, the responsible person must agree in writing to accept responsibility for compliance with the permit and this part and shall be the first person contacted by the department to resolve a violation of the permit or this part.

E. A fugitive dust control permit application shall be submitted to the department by using permit application forms provided by the department along with any applicable fee. However, the fugitive dust control plan may be in any form including duplicates of programs to comply with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and meet the objectives of this part. If the plan does not specifically enumerate the control measures proposed to mitigate fugitive dust, the permit application shall be deemed incomplete. Permit applications shall be rejected if incomplete. If an incomplete application is rejected, a new application may be filed and all time limits within this part shall apply as if the initial application had not been filed.

F. When the complete permit application and fee are delivered to the department, the department shall have 10 working days to review the permit application if the area to be permitted is at least three-quarters of an acre but no greater than 25 acres, or the department shall have 20 working days to review the proposed permit if the area to be permitted is greater than 25 acres. If all requirements of this part are met, the department shall issue a permit to the permittee, which shall authorize commencement of active operations. If the department has not approved, denied, or notified the permittee of permit application deficiencies within 30 working days, the permit shall be automatically approved and operations may commence.

G. An approved fugitive dust control permit shall be valid for one year from the date of approval by the department or the project expiration date provided in the permit application, whichever is longer, but no more than five years. If the project plan, expiration date, the total disturbed area(s), or the proposed control measures change in any manner, a new permit shall be required. At least 10 days prior to the expiration date, all fugitive dust control permits must be renewed by the then-current permittee, or the permit shall expire as of the expiration date. permit renewal fees and programmatic permit fees shall be as described in 20.11.2 NMAC. Fugitive dust control permits may be transferred to legal heirs, successors, and assigns, who shall become the new permittee. Permit transfers may be made as an administrative amendment provided that: a copy of a written agreement between the current and new permittee, containing a specific date of transfer of permit responsibility, coverage, and liability, has been submitted to the department, and either the department has determined that no change to the permit other than the administrative change is necessary, or changes to the permit deemed necessary by the department have been made, the new owners have submitted the application information required in Section 20.11.20.15 NMAC of this part, and no grounds exist for permit termination, as otherwise provided by this part.

H. By accepting a permit, the permittee agrees to take all actions required by the fugitive dust control permit issued by the department to prevent a violation of this part, including stopping active operations, if necessary. If the permittee fails to take all required actions, the owner or operator or designated responsible person, if different, shall be responsible to take all actions required to prevent or satisfactorily resolve a violation of this part, including stopping active operations, if necessary.

I. By issuing a stop work order, the department may suspend, and/or may initiate revocation of any permit issued by the department if the permittee fails to implement the reasonably available control measures established in the fugitive dust control permit.

J. By issuing a stop work order, the department may require any person to stop all active operations at a site if that person fails to obtain a permit as required by this part.

K. For all projects with a valid permit for a total of 10 acres or more, the permittee shall install and maintain a sign provided by the department or that they provide that meets the requirement of this part. The department will establish uniform design guidelines for the sign to ensure that the sign is reasonably legible to the public. If the required information is provided in an existing project sign that has been established for any other purpose, an additional sign shall not be required to comply with this part. At a minimum, the sign shall contain the following:

- (1) project name; and
- (2) permittee name; and
- (3) phone number of designated responsible person or owner; and
- (4) subcontractor name (optional); and
- (5) subcontractor phone number (optional); and
- (6) air quality division phone number; and
- (7) fugitive dust control permit number; and
- (8) project acreage.

20.11.20.15 FUGITIVE DUST CONTROL PERMITS; MINIMUM REQUIREMENTS: Proposed fugitive dust control permit applications shall be submitted on forms provided by the department. Fugitive dust control plans may be submitted in any format including duplicates of programs required to comply with other statutes or regulations so long as they conform to the information requirements of this part. If extraneous information is supplied that does not apply to mitigation of fugitive dust control, the permit application shall be deemed incomplete. Proposed fugitive dust control permit applications shall include the following:

- A.** permittee, address, telephone number and fax number; and
- B.** owner's name, address, telephone number and fax number if different from permittee; and
- C.** operator's name, address, telephone number and fax number if different from Permittee; and
- D.** if different than the permittee, the name, address, telephone number and fax number of the responsible person or official designated in writing on the permit who is responsible for activities on-site. The department shall first contact the responsible person or official to resolve a violation of this part; and
- E.** anticipated project start date which must be not fewer than 10 working days from the department's receipt of the permit application for areas containing greater than three quarters of an acre but no greater than 25 acres, nor fewer than 20 working days from the department's receipt of the permit application for areas containing more than 25 acres; and
- F.** anticipated project end date; and
- G.** project description; and
- H.** project location, including:
 - (1) street address, if available; and
 - (2) universal property code, latitude and longitude or universal transverse mercator (UTM) coordinates, if reasonably available; and
- I.** total area of disturbance in acres or square feet; and
- J.** the resulting fees due and how they were calculated; and
- K.** a description of the sequencing of the active operations, if phasing is used to reduce the per acre fees due; and
- L.** estimated total volume of bulk material being handled (e.g. cubic yards), including any bulk material being imported, exported or relocated; and
- M.** location from which bulk material is being imported to the site and a statement regarding whether the site where the imported material originates will have a separate fugitive dust control permit, or as soon as known; and
- N.** location to which bulk material from the site is being exported and a statement regarding whether the site to which the material is to be exported will have a separate fugitive dust control permit, or as soon as known; and
- O.** whether an approved drainage plan exists pursuant to city of Albuquerque or Bernalillo county ordinances and, upon request by the department, a copy of the drainage plan; and
- P.** site map (e.g. zone atlas page, aerial photograph); and
- Q.** type of work being performed and appropriate reasonably available control measures or other effective control measures to be used (see Section 20.11.20.23 NMAC); and
- R.** a statement that effective contingency fugitive dust control measures shall be taken by the permittee if the control measures in Subsection Q of 20.11.20.15 NMAC are not effective in maintaining compliance with this part; and
- S.** a commitment to comply with provisions of Subsection B of 20.11.20.16 NMAC if the permittee chooses to preserve the ability to qualify for a high wind affirmative defense; and
- T.** high wind contingency measures that will be implemented when high winds occur; and
- U.** a description of the actions the permittee will take to mitigate damage caused by fugitive dust if generated by the permitted site; and
- V.** other conditions agreed to by the owner or operator and the department; and
- W.** signatures of the permittee, and if different, signatures of the owner, operator and/or any designated responsible person or official certifying that the information in the fugitive dust control permit is true, accurate and complete, and certifying that the all actions necessary to comply with this part, including suspending active operations if necessary to comply with the provisions of this part.

[20.11.20.15 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.16 HIGH WIND EVENT REQUIREMENT; HIGH WIND EVENT AFFIRMATIVE DEFENSE

A. General requirements: A high wind event is a time period of five consecutive minutes with an average wind speed of 30 miles per hour (high wind event threshold level) or higher. During a high wind event, all persons who own or operate a fugitive dust source where active operations have occurred or are occurring must use reasonably available control measures or other effective measures to prevent fugitive dust from leaving the source, and all persons shall implement control measure in Paragraph (5) of Subsection C, of this section.

B. High wind affirmative defense: If the department initiates an administrative enforcement action against either a permittee or a designated responsible person, or both (respondent) alleging a violation of a permit or this part during a high wind event, the respondent may assert an affirmative defense in the enforcement action if the respondent establishes by credible evidence that respondent complied with the requirements established in Subsection C of 20.11.20.16 NMAC below. In order to successfully assert the affirmative defense, during the entire duration of a permit the respondent shall utilize the applicable controls described in Subsection C of 20.11.20.16 NMAC below, regardless of whether or not a high wind event exists, with the exception of Paragraph (5) of Subsection C of 20.11.20.16 NMAC below, which applies only during a high wind event. The affirmative defense shall not be available if respondent has failed to diligently perform the control measures specified in Paragraphs (1) through (5) of Subsection C of 20.11.20.16 NMAC. The availability of the affirmative defense shall not change the respondent's potential liability for any damage caused by fugitive dust leaving the permitted property, and the affirmative defense shall not change the permittee's obligation to remove fugitive dust originating from the permitted source, or otherwise remedy the damage, as required by Subsection D of 20.11.20.12 NMAC. The board, its members, and employees and officials of the city of Albuquerque and the county of Bernalillo shall not incur liability for damage to persons or property caused by fugitive dust leaving the permitted property.

C. Mandatory control measures: To assert a high wind event affirmative defense as described in Subsection B of 20.11.20.16 NMAC above, a permittee must utilize the applicable control measures in Paragraphs (1) and (2) of Subsection C of 20.11.20.16 NMAC on an ongoing basis. Without prior notice to the department, the permittee may use measure in Paragraph (3) of Subsection C of 20.11.20.16 NMAC in place of measure in Paragraph (1) of Subsection C of 20.11.20.16 NMAC. After receiving written permission from the department, the permittee may substitute measure in Paragraph (4) for measures in Paragraphs (1), (2), and/or (3) of Subsection C of 20.11.20.16 NMAC. All permittees shall implement measure in Paragraph (5) of Subsection C of 20.11.20.16 NMAC, during a high wind event. The mandatory control measures are described in Paragraphs (1) through (5) of this Subsection.

(1) Use of wet suppression sufficient to provide and maintain a soil moisture content of not less than twelve percent, as used for purposes of determining the optimal compaction rating of the soil. To determine the moisture content, first, scrape away the top one-half to one inch of the soil. The soil sample shall be taken from the freshly scraped area. Soil moisture shall be determined by firmly squeezing by a small handful of sample soil to make an irregular shaped ball of soil. Upon observing the ball and the hand, there shall be credible evidence of the soil binding together with the ball retaining shape due to moisture in the soil. The ball may exhibit some cracking, but shall not collapse due to low moisture content when the hand is opened. The respondent or the department shall test samples obtained from a minimum of three separate representative locations on the permitted property. To demonstrate compliance, at least two-thirds of the samples must exhibit the required moisture content. For additional details regarding the hand test method of determining soil moisture content, use the U. S. Department of Agriculture Natural Resources Conservation Service's Program Aid Number 1619, *Estimating Soil Moisture by Feel and Appearance* published in 1998. Other similar guides have been published such as the NebGuide G84-690-A published by Norman L. Klocke et al. for the university of Nebraska in 1998. A copy of these guidelines may be obtained from the department. The respondent or the department may also use a reasonably accurate commercially available instrument to determine soil moisture content, including analysis determined with a proctor method. The respondent or the department may contract with a public or private laboratory to perform a proctor or other method. For proctor analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be used. Where possible, methods ft test, ASTM D2922-91 - nuclear density).

(2) Use of properly maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately 24 or more inches high. The fence shall be installed in a durable manner. For example, one durable installation method involves use of steel T-posts spaced approximately eight to 10 feet apart with steel mesh wire used as a reinforcement backing to the fabric. Use of fabric fencing standards associated with the national pollutant discharge system may be approved by the department if they are consistent with the requirements of Paragraph (2) of

Subsection C of 20.11.20.16 NMAC. The department may also approve alternative fencing material if it provides equal or better control of fugitive dust. Alternatives may include solid walls or sturdy fences that effectively control fugitive dust. To maintain effectiveness of the fence, fugitive dust that accumulates on either side of the fencing must be removed promptly.

(3) Use of chemical dust suppressants sufficient to substantially reduce fugitive dust leaving the fugitive dust source while active operations are idle, usually used when active operations are suspended for more than 48 hours.

(4) A department-approved alternative dust control measure or measures that provide fugitive dust control that is equal to or better than measures in Paragraphs (1), (2), and/or (3) of Subsection C of 20.11.20.16 NMAC. Before a permittee may substitute an alternative control measure, the department must approve the control measure in writing as a permit amendment.

(5) Stopping active operations that are capable of producing fugitive dust.

D. Determination of high wind event threshold level (threshold level): The department and the respondent shall use a reasonably accurate recording anemometer to measure the wind speeds in order to determine whether the threshold level has been reached or exceeded. The measurement time period used to determine the threshold level shall be five consecutive minutes. Wind velocity measurements by the department and the respondent shall be taken on the permitted property or within 200 feet of the permitted property being evaluated. Wind measurement results shall be documented, and shall be made available to the permittee and/or person responsible for controlling fugitive dust at the permitted property being inspected.

E. Limitations on use of affirmative defense: A respondent may not assert the affirmative defense described in this section:

(1) against an action for injunctive relief; or

(2) to prohibit the EPA or a citizen's group from taking an enforcement action.

[20.11.20.16 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.17 FILING, PROCESSING AND INSPECTION FEES: Fees required by this part are located in 20.11.02 NMAC.

[20.11.20.17 NMAC - Rp, 20 NMAC 11.20 II.2 - 9, 3/1/04]

20.11.20.18 FUGITIVE DUST CONTROL PERMIT APPLICATION PROCESSING:

A. Any person required to submit a fugitive dust control permit application for active operations that will disturb at least three-quarters of an acre, but no more than 25 acres shall submit the permit application along with applicable fees to the department no fewer than 10 working days prior to the start of active operations.

B. Any person required to submit a fugitive dust control permit application for active operations that will disturb more than 25 acres shall submit the permit application along with applicable fees to the department no fewer than 20 working days prior to the start of active operations.

C. Within 10 working days of the department receiving the permit application and fees for active operations that will disturb three-quarters of an acre or more, but no more than 25 acres, the department will approve the permit, approve the permit with conditions or deny the permit.

D. Within 20 working days of the department receiving the permit application and fees for active operations that will disturb more than 25 acres, the department will approve the permit, approve the permit with conditions or deny the permit.

E. If the permit is not issued or denied within the requisite time frames enumerated in Subsections C and D of 20.11.20.18 NMAC, and 30 working days have elapsed from the filing of the permit application, the permit shall be automatically approved and operations may commence.

F. The permittee or designated responsible person or official shall make the permit available to all employees, agents, sub-contractors, and any other person performing work in the area of active disturbance to assist in maintaining compliance with this part. The permittee shall explain the requirements of the permit to appropriate employees, contractors and agents working at the site. The permittee shall provide information to any other interested person in the area as to where they may obtain a copy of the permit from the department.

G. It is the responsibility of the permittee or designated responsible person or official to ensure that the fugitive dust control permit or amended permit contains current contact information and that a copy is maintained at the work site and is provided to the department. Failure to maintain and provide up-to-date contact information shall be a violation of this part.

H. The department may amend the permit when requested to do so by the permittee. No fee shall be charged for amending a permit, unless the amendment increases the number of acres covered by the permit. Both the department and the permittee must sign an amended permit.

I. The department shall implement an electronic filing system using the Internet in order to expedite processing and filing of fugitive dust control permits and plan applications.
[20.11.20.18 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.19 PUBLIC AND PRIVATE UNPAVED ROADWAYS, SHORT-CUTS AND UNPAVED PARKING AREAS:

A. Beginning one year after the effective date of this part, no unpaved roadways greater than one-quarter mile in length and no unpaved parking areas may be constructed or allowed to be constructed or reconstructed on any publicly or privately-owned land, unless the road or parking area is stabilized and maintained consistent with good engineering and maintenance practices. In addition, beginning one year after the effective date of this part, no privately or publicly owned unpaved short cut of any length may be constructed or be allowed to remain usable when it is evident the short cut is being used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway. A variance from this subsection may be granted by the board in a manner consistent with the variance procedures provided in 74-2-8 NMSA.

B. Owners or operators shall use reasonably available control measures on all unpaved roadways and unpaved parking areas so visible fugitive dust leaving the property is not visible longer than a total of 15 minutes in any 60 minute observation period using visible fugitive dust detection method described in Section 20.11.20.26 NMAC of this part, or an equivalent method approved in writing by the department.

C. Existing public unpaved roadway; complaints. If the department receives a written fugitive dust complaint regarding an existing unpaved public roadway, including any roadways regulated pursuant to Subsection D of 20.11.20.13 NMAC, the department will forward the complaint by certified mail, return receipt requested, to the governmental agency responsible for maintenance of the roadway. Within 45 days from the date the complaint was received by the responsible agency, the responsible agency shall make a reasonable effort to address the complaint, and the governmental agency shall provide the department with a written report of the actions taken to resolve the complaint. Failure of the responsible agency to submit a timely report shall be a violation of this part.

[20.11.20.19 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.20 ABRASIVE PRESSURE BLASTING OPERATIONS: All persons performing abrasive pressure blasting operations shall employ reasonably available control measures or other effective control measures at all times to substantially reduce fugitive dust emissions. Any person conducting abrasive pressure blasting operations is not required to obtain a fugitive dust control permit from the department. Note that stationary source permitting regulations, such as Part 41 and Part 42, may apply to pressure blasting operations.

[20.11.20.20 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.21 MECHANICAL (LEAF) BLOWERS; PROPER USE REQUIRED: Any person using a mechanical blower (e.g. leaf blower) or other device designed to use forced air to move dust or organic material and debris shall take all reasonable efforts to ensure that leaves, dust and other debris do not remain deposited upon publicly-owned property as the result of the use of the leaf blower or other device. The intent of this requirement is to prevent the dust, material and debris from becoming ground up by abrasive action of tires and then being entrained into the atmosphere as particulate matter.

[20.11.20.21 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.22 DEMOLITION AND RENOVATION ACTIVITIES; PERMIT REQUIRED; ASBESTOS NOTIFICATION REQUIRED: No person shall demolish any building containing over 75,000 cubic feet of space without first obtaining a fugitive dust control permit. All demolition and renovation activities shall employ reasonably available control measures at all times, and, when removing asbestos containing materials (ACM), shall also comply with the federal standards incorporated in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources. Part 64 requires any person who demolishes or renovates any commercial building, residential building containing five or more dwellings, or a residential structure that will be demolished in order to build a nonresidential structure or building to file an asbestos notification with the department no fewer than 10 days before the start of such activity. Written asbestos notification certifying the presence of ACM is required even if asbestos is not or may not be present in such buildings or structures. Failure to provide proper asbestos

notification, or comply with the federal standards incorporated in 20.11.64 NMAC, shall be a violation of the requirements of 20.11.64 NMAC. Knowingly violating provisions of 20.11.64 NMAC is a fourth-degree felony pursuant to the New Mexico Air Quality Control Act, 74-2-14.C.3 NMSA 1978.
[20.11.20.22 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.23 REASONABLY AVAILABLE CONTROL MEASURES FOR FUGITIVE DUST: The permittee may include in the permit application one or more of the reasonably available control measures in this Section or one or more alternative fugitive dust control measures, including measures taken to comply with any other statute or regulation that would effectively control fugitive dust during the active operations or construction activity.

A. Unpaved roadways:

- (1) paving using recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for such use;
- (2) using dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- (3) using wet suppression; or
- (4) using traffic controls, including decreased speed limits with appropriate enforcement; other traffic calming methods, vehicle access restrictions and controls; road closures or barricades; and off-road vehicle access controls and closures.

B. Paved roadways:

- (1) cleaning up spillage and track out as necessary to prevent pulverized particulates from being entrained into the atmosphere;
- (2) using paved or gravel entry/exit aprons with devices, such as steel grates, capable of knocking mud and bulk material off vehicle tires;
- (3) using on-site wheel washes; or
- (4) performing regularly scheduled vacuum street cleaning or wet sweeping with a sweeper certified by the manufacturer to be efficient at removing particulate matter having an aerodynamic diameter of less than 10 microns (i.e. PM₁₀).

C. Trucks hauling bulk materials on public and private roadways:

- (1) using properly secured tarps or cargo covering that covers the entire surface area of the load;
- (2) preventing leakage from the truck bed, sideboards, tailgate, or bottom dump gate;
- (3) using wet suppression to increase moisture content of the bulk materials being hauled;
- (4) using dust suppressants applied in amounts and rates recommended by the manufacturer; or
- (5) maintaining a minimum of six inches of freeboard from the rim of the truck bed. Freeboard means the vertical distance from the highest portion of the load abutting the bed and the lowest part of the top rim of the truck bed.

D. Active operations in construction areas and other land disturbances:

- (1) Short term control measures may include:
 - (a) wet suppression;
 - (b) dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
 - (c) temporary upwind windbreaks, including fabric fences where the top is at least four feet above grade, and with the bottom of the fence sufficiently anchored to the ground to prevent material from blowing underneath the fence; all windbreaks and fabric fences should be maintained in an upright and functional condition at all times until no longer needed to prevent or abate fugitive dust; all accumulated material on the windward side of the windbreak should be periodically removed to prevent failure of the windbreak;
 - (d) watering the site at the end of each workday sufficient to stabilize the work area;
 - (e) applying dust suppressants in amounts and rates recommended by the manufacturer on the worksite at the end of each workweek if no active operations are going to take place over the weekend or if active operations stop for more than two consecutive days;
 - (f) starting construction at the location that is upwind from the prevailing wind direction and stabilizing disturbed areas before disturbing additional areas;
 - (g) stopping active operations during high wind; or
 - (h) clean up and removal of track-out material.
- (2) Long term control measures should include:

(a) site stabilization using dust suppressants applied in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(b) reseeding using native grasses as specified in this part;

(c) xeriscaping;

(d) installing parallel rows of fabric fencing or other windbreaks set perpendicular to the prevailing wind direction either onsite or on a nearby property with the permission of the nearby property owner;

(e) surfacing with gravel or other mulch material of a size and density sufficient to prevent surface material from becoming airborne;

(f) mulching and crimping of straw or hay as specified in Section 20.11.20.27 NMAC of this part;

- (g) installing permanent perimeter and interior walls;
- (h) conventional landscaping techniques; or
- (i) clean up and removal of track-out material.

E. Bulk material handling:

(1) using spray bars;

(2) applying wetting agents (surfactants) to bulk material;

(3) using wet suppression through manual or mechanical application;

(4) adding dust suppressants to bulk materials in amounts and rates recommended by the manufacturer and maintained as recommended by the manufacturer;

(5) stopping bulk material handling, processing, loading or unloading during high wind conditions;

(6) reducing process speeds; or

(7) reducing drop heights.

F. Industrial sites:

(1) paving roadways and parking area with recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for use;

(2) performing regularly scheduled vacuum street cleaning or wet sweeping;

(3) regularly using wet suppression on unpaved areas;

(4) using dust suppressants applied in amounts and rates recommended by the manufacturer, and maintained as recommended by the manufacturer;

(5) installing wind breaks;

(6) installing enclosures;

(7) installing on-site anemometers to measure wind speed; the anemometer should trigger a suitable warning mechanism such as a strobe light or audible alarm (that will not violate any applicable noise ordinance) to notify on-site personnel of high wind conditions;

(8) increasing wet suppression applications before and during high wind conditions; or

(9) stopping active operations during high wind conditions.

G. Demolition and renovation activities when asbestos-containing materials are not present:

(1) using constant wet suppression on the debris piles during demolition;

(2) using water or dust suppressants on the debris pile, applied in amounts and rates recommended by the manufacturer;

(3) using enclosures;

(4) using curtains or shrouds;

(5) using negative pressure dust collectors; or

(6) stopping demolition during high wind conditions.

H. Milling, grinding or cutting of paved or concrete surfaces:

(1) constantly using wet suppression;

(2) ongoing clean up of milled, ground or cut material by using wet sweeping;

(3) using dust suppressants applied in amounts and rates recommended by the manufacturer, and maintained as recommended by the manufacturer;

(4) using enclosures; or

(5) using curtains or shrouds.

I. Pressure blasting operations:

(1) using non-friable abrasive material;

(2) using curtains, enclosures or shrouds;

(3) using negative pressure dust collectors;

(4) using constant wet suppression;

- (5) maintaining ongoing clean up of abrasive material; or
- (6) stopping active operations during high wind conditions.

J. Spray painting and other coatings:

- (1) using enclosures that comply with applicable fire codes; or
- (2) using curtains, enclosures or shrouds.

K. High wind contingency measures:

- (1) installing and using on-site anemometers to measure wind speed; the anemometer should trigger a suitable warning mechanism such as a strobe light or audible alarm (that will not violate any applicable noise ordinance) to notify site personnel of high wind conditions;
- (2) using constant wet suppression;
- (3) using dust suppressants applied in amounts and rates recommended by the manufacturer;
- (4) using wetting agents or surfactants on disturbed areas, bulk materials or stockpiles;
- (5) slowing down process; or
- (6) shutting down active operations.

[20.11.20.23 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.24 NATIVE GRASS SEEDING AND MULCH SPECIFICATIONS:

A. If the fugitive dust control permit includes provisions to revegetate a disturbed area, the permittee can choose to use the following specifications. Because these specifications have provided reasonably successful results in the past in Bernalillo county, they are included here as a reference for permittees and others choosing to use native revegetation as a long-term reasonably available control measure. However, use of these specifications does not guarantee success.

(1) The **native seed** species used and rate of application should be as shown in Subsection F of Section 20.11.20.24 NMAC.

(a) If the area to be seeded is along a recreational trail of any type, the seed mixes for either type of soil listed in Subsection F of this section should not include four-wing saltbush and the seeding rate should be reduced by one pound per acre.

(b) **Seeds may be pre-mixed by a seed dealer.** Each pre-mixed bag of seed should be sealed and labeled by the seed dealer in accordance with federal seed laws and New Mexico department of agriculture labeling laws. The label should include: variety, kind of seed, lot number, purity, germination, percent crop, percent inert, percent weed (including noxious weeds), origin, test data and net weight. Federal seed laws require that analysis shall be no older than five months for seed shipped interstate and no older than nine months for seed shipped intra-state.

(c) **48 hours before seeding,** the owner or operator should give written notice to the department by hand delivery or facsimile, requesting inspection of the sealed seed bags to be used. The department may inspect the sealed seed bags and labels.

(2) **Fertilizer and soil amendments:** Unless otherwise specified in the fugitive dust control permit, no fertilizer or other soil amendments are required on areas to be reseeded.

(3) **Mulch:** Areas to be reseeded should be mulched as described below unless otherwise specified in the permit.

(a) **Hay mulch:** Perennial native or introduced grasses of fine-stemmed varieties should be used unless otherwise specified in the plan. At least 65 percent of the herbage by weight of each bale of hay should be 10 inches in length or longer. Hay with noxious seed or plants should not be used. Rotted, brittle, or moldy hay are not considered acceptable. Marsh grass or prairie hay composed of native grass of species to be seeded is considered acceptable. Tall wheat grass, intermediate wheat grass, switch grass, or orchard hay will be acceptable if cut prior to seed formation. Marsh grass hay should be composed of mid and tall native, usually tough and wiry grass and grass-like plants found in the lowland areas within the Rocky Mountain region. Hay should be properly cured prior to use. Hay that is brittle, short fibered or improperly cured is not considered acceptable. Hay mulch should be crosshatched crimped to minimum depth of two inches.

(b) **Straw mulch:** Small grain plants such as wheat, barley, rye, or oats should not be used. Alfalfa or the stalks of corn, maize or sorghum are not considered acceptable. Material which is brittle, shorter than 10 inches or which breaks or fragments during the crimping operation are not considered acceptable. Straw mulch should be crosshatched crimped to minimum depth of two inches.

(c) **Gravel mulch:** Gravel mulch should be a maximum of three-quarter to one inch in diameter and must have been crushed or screened with a minimum of one angular face. Experience has

demonstrated that gravel mulch provides very successful results on steep slopes and other areas that may be difficult to stabilize.

(d) **Erosion control mats, fabric or blankets:** The type of erosion control mats, fabric or blankets used should be specified in the fugitive dust control permit.

B. Seed bed preparation:

(1) Prior to starting seed bed preparation, the final grades of all earthwork should be inspected and certified by a New Mexico licensed engineer, and a copy of the certification should be delivered to the department:

(a) no soil preparation should be performed when the surface is wet or muddy or when the soil is so moist that the soil is not fully loosened by the discing operation;

(b) if erosion, crusting or re-compaction occurs in an area before seeding, mulching and crimping are successfully completed, the area should be reworked, beginning with seedbed preparation.

(2) **Mechanical preparation:** The seedbed should be loosened to a minimum depth of six inches by disc or harrow. Areas of heavy or compacted soil may require additional preparation by chiseling or ripping if discing alone does not result in preparation to the full minimum depth of six inches. The soil should be worked to a smooth surface and should be free of clods, stones four inches in diameter and larger, and debris or foreign material that could interfere with seeding or crimping operations.

(3) **Hand preparation:** Areas which cannot be prepared with mechanized equipment because of small size, irregular shape or slope may be prepared to a minimum depth of two inches using hand tools or a rototiller, as specified in the permit.

C. Seeding:

(1) Should not start until the seed bed preparation has been inspected and certified by a New Mexico licensed engineer, a New Mexico licensed landscape architect, or other professional approved by the department (e.g. a department certified erosion control specialist). Notice in writing or by facsimile providing certification pertaining to the seed bed preparation should be given to the department at least 48 hours prior to beginning seeding operations so that the department has an opportunity to inspect the site. No seeding operations should be conducted when steady wind speeds exceed 10 miles per hour.

(2) **Seed application:**

(a) **Drill seeding:** Drill seeding is highly recommended. Seed should be applied with a “rangeland” type seed drill equipped with packer wheels. Seed should be drilled to a maximum depth of one-half inch. Direction of seeding should be across slopes and on the contour whenever possible.

(b) **Broadcast seeding:** Seed may be applied using the broadcast method when size, irregular shape, or slope exceeding three to one, prevents the use of a seed drill. Seed may be broadcast by hand or by a mechanical seeder provided that the seed is evenly distributed over the seeding area. Areas that are broadcast seeded should be seeded at a rate that is double the rate used for drill seeding. Areas of broadcast seeding should be hand raked to cover seed.

(c) **Seeding with gravel mulch:** Areas to be gravel mulched should be seeded at double the standard seed rate with one-half the seed applied prior to application of gravel and one-half of the seed applied on the surface of the gravel. Water should be applied in a quantity sufficient to wash seed from the surface and into the gravel.

(d) **Hydro seeding:** Hydro seeding with native grass will normally only be successful on areas that will be irrigated.

D. Hay or straw mulching:

(1) All seeded areas should be mulched unless otherwise specified in the fugitive dust control permit. On seeded areas that are level or have slopes that are a ratio of three to one or less, any of the four types of mulching below may be used. On erosion control areas or slopes steeper than a ratio of three to one, only gravel mulch or erosion control materials should be used.

(2) **Hay mulch** should be applied at a minimum rate of one and one-half tons per acre of air dry hay.

(3) **Straw mulch** should be applied at a minimum rate of two and one-half tons per acre of air dry straw.

(4) Hay or straw mulch should be crosshatched crimped into the soil to a minimum depth of two inches.

(a) The mulch should be spread uniformly over the area either by hand or with a mechanical mulch spreader.

(b) When spread by hand, the bales of mulch should be torn apart and fluffed before spreading.

(c) Mulching should stop when wind speeds exceed 15 miles per hour.

(d) The mulch should be wetted down and allowed to soften for approximately 15 to 20 minutes prior to crimping.

(e) A heavy disc should be used to crimp or anchor the mulch into the soil to a minimum depth of two inches. A mulch-tiller with flat serrated discs at least one-quarter of an inch in thickness, having dull edges with discs spaced six inches to eight inches apart or similar equipment should be used. The discs should be of sufficient diameter to prevent the frame of the equipment from dragging the mulch.

(f) The crimping operations should be across the slope where practical, but not parallel to prevailing winds. In general, crimping should be in a north-south direction or in tight interlocking "S" curves to avoid straight east-west crimp lines.

(g) If small grain straw mulch is used, the mulch should be crimped in two directions in a cross-hatch pattern.

(5) **Gravel mulch:** Gravel mulch should be laid evenly by hand or by equipment to a thickness of two inches.

(6) **Erosion control mats, fabric or blankets:** The type of erosion control mats, fabric or blankets used should be as specified in the fugitive dust control permit. Anchoring of the erosion control materials should be consistent with the manufacturer's recommendations.

(7) Upon completion of the reseeding project, the permittee should deliver written notice to the department in a timely manner, certifying completion of seeding project.

E. Protection of native grass seeded area: If the person, owner or operator has elected to use native seeding as a control measure, they shall be responsible for protecting and caring for the seeded area until plants are fully established. After project completion, the owner or operator may need to repair any damage to seeded areas caused by pedestrian or vehicular traffic or vandalism. During periods of low rainfall, supplemental watering may be a way to improve success in establishing the native grass seed. Because the owner is responsible for the fugitive emissions leaving the property, failure of the reseeding project shall not be a defense to enforcement of this part. The owner or operator may find it necessary to reseed or use other reasonably available control measures to bring the property into compliance. The department strongly recommends that any area being seeded or mulched be adequately fenced and posted to prevent trespass traffic.

F. Seed specifications and rates as established by the "City of Albuquerque Standard Specifications for Public Works Construction – 1986, Section 1012, *Native Grass Seeding*" as updated or as approved in writing by the department

G. Variations in seeding due to special environmental conditions: The owner or operator may use a different seeding mixture in order to address special environmental conditions that make it unlikely for success of the reseeding effort. Use of an annual rye (*Lolium sp.*) or cool season grasses (e.g. barley at 10 pounds per acre) may be added to the seed specification in order to help stabilize soils, especially for disturbed areas comprising 25 acres or more when a significant amount of the land area is not expected to be built upon within one year. [20.11.20.24 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.25 REVIEW MEETING, HEARING ON THE MERITS REGARDING PERMIT APPLICATIONS AND PERMITS:

A. If a permit applicant is adversely affected by, or disagrees with the division's proposed decision regarding the applicant's permit application, the applicant may request an informal review meeting to discuss the division's proposed decision. The request shall be in writing or on a form provided by the division. Within 15 working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director and the division manager. Unless the director receives a timely request for an informal review meeting, the division's proposed decision regarding the permit application shall be final. Within 10 working days after receiving the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g. division manager or the person issuing the proposed decision regarding the permit application) in an attempt to resolve disagreements. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by the final decision made by the division representative, the permit applicant or permittee may follow the procedures described in the following subsection.

B. A person adversely affected by the decision of the division regarding a permit application or permit ("petitioner") may file a petition for a hearing on the merits before the board. The petition shall be in writing, addressed to the board and be delivered to the director no later than 30 consecutive days after the later of: 1) the decision of the division regarding the proposed application, if no timely request has been made for an informal review meeting; or 2) the final decision of the division representative following an informal review meeting.

Unless the director receives a timely petition for a hearing on the merits, the decision of the division regarding the permit application or permit shall be final.

C. If a timely petition for a hearing on the merits is received by the director, the board shall hold a hearing on the merits within 60 consecutive days after the director receives the petition. No fewer than 21 consecutive days before the start of the hearing, the board shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the hearing by certified mail. If the subject of the petition is a permitting action deemed by the board to substantially affect the public interest, the board shall cause the notice of the date, time and place of the hearing to be published. In such circumstances, the public shall also be given reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person submitting data, views or arguments orally or in writing shall be subject to examination at the hearing.

D. The board may designate a hearing officer to take evidence in the hearing and recommend a decision to the board. All hearings shall be recorded.

E. The burden of proof shall be upon the petitioner. Based upon the evidence presented at the hearing, within 30 consecutive days of the close of the hearing, the board shall sustain, modify, or reverse the decision of the division regarding the permit application or permit. The decision of the board shall be final and may be appealed consistent with 74-2-9 NMSA.

[20.11.20.25 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.26 VISUAL DETERMINATION OF FUGITIVE DUST EMISSIONS VIOLATIONS: The following method, hereafter called the “visible fugitive dust detection method”, is used to visually determine the total amount of time that fugitive dust emissions are visible during a one-hour observation period. If a trained department observer records visible fugitive dust leaving the property being investigated for a total of 15 minutes or more during a one-hour period, a violation of this part has occurred. The observer does not have to be certified in procedures found in 40 CFR 60, Method 9, *Visual Determination of the Opacity of Emissions From Stationary Sources* (EPA Method 9). However, the observer must receive adequate training to properly identify a violation of this part that is caused by anthropogenic activities and to distinguish dust that emanates from a non-regulated source and be certified by the department as a trained observer. The following method does not require the opacity of emissions to be determined during the observation period, but determines the total amount of time in a one-hour period during which visible dust emissions are observed leaving a property line.

A. To properly perform this method, the observer shall use two stopwatches. One stopwatch shall be used to record the continuous one-hour time period during which the observations are conducted. This period shall be known as the “observation period.” The second stopwatch will be used to record total accumulated amount of time that emissions are visible during the observation period. The second stopwatch shall establish the “visible fugitive dust emission time”.

B. Prior to the observation, the observer shall determine the location of potential fugitive dust source(s) and the location of the downwind property line for the source. The observer shall sketch the location of the fugitive dust source(s), and when feasible, record the observer’s location on a copy of the fugitive dust control permit map or aerial photograph; and sketch or photograph the location of the downwind property line and physical features that help define the property line; and sketch or photograph the observer’s location during the observations; and sketch the position of the sun relative to the observer. The observer shall document that the observed fugitive dust is not originating from an upwind source other than the source being evaluated. The observer must be at least 15 feet away from the visible fugitive dust emissions, and not more than one-quarter mile away.

C. The observer shall record:

- (1) observer’s name and affiliation; and
- (2) date of observation; and
- (3) company name, property owner or operators, if known; and
- (4) description of the fugitive dust sources; and
- (5) wind speed and direction (explain method of determining the wind speed, i.e., hand-held anemometer; and
- (6) sky conditions.

D. At the beginning of the observation period, the observer shall record the time of day when the observation begins. The observer shall start the first stopwatch to begin recording the observation period and shall observe along the property line. With the second stopwatch, the observer shall record the length of time dust emissions are visible leaving the property line. The observer shall stop the second stopwatch when the visible dust emissions stop. The observer shall continue this procedure during the observation period or until the total visible

fugitive dust emission time establishes a violation of this part. The observer shall record the actual time of day when the observations ended.

E. Observer breaks: The observer may take a break periodically, but for no more than 15 minutes. During the break, the observer shall stop the both stopwatches and shall record the actual time of day from the start to the end of the break.

[20.11.20.26 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.27 ENFORCEMENT:

A. It is the responsibility of all persons to whom this part applies to use control measures that are effective in maintaining compliance with this part. If a violation occurs or is occurring, the department may issue a verbal warning, issue a written warning, require a violator to pay an administrative penalty, and may take all other actions authorized by law and equity, including issuing a stop work order as authorized by this part.

B. If the department determines a person has violated or is violating a requirement or prohibition of this part, the department may initiate an administrative enforcement action and assess an administrative penalty for a past or current violation, or both, as authorized by 74-2-12 NMSA. As also authorized by 74-2-12 NMSA and 74-2-12.1 NMSA, the department may commence a civil action in New Mexico district court for appropriate relief, including a temporary or permanent injunction. In addition, as authorized by 74-2-14 NMSA, the department also may commence or cause a criminal action to be commenced. Violation of a fugitive dust control permit or fugitive dust control plan approved by the department is a violation of this part.

C. As authorized by 74-2-12 NMSA, in connection with an administrative enforcement action, the Director may issue subpoenas for attendance and testimony of witnesses and the production of relevant papers, books and documents and may adopt rules for discovery procedures.

D. If a person receives a notice of a proposed administrative enforcement action from the division, that person ("requestor") may request an informal review meeting to discuss the division's proposed administrative enforcement action. The request shall be in writing or on a form provided by the division. Within five working days after the requestor has received the proposed administrative enforcement action, the requestor shall deliver the request to the director and the division manager. Within five working days of receiving the request, the division manager shall hold an informal review meeting with the requestor and a division representative (e.g. division manager, compliance officer, or person issuing the action) in an attempt to resolve the administrative enforcement action. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the action. If the requestor is adversely affected by the final decision made by the division representative, the requestor may follow the procedures described in the following subsection.

E. A person who receives a proposed administrative enforcement action and chooses not to sign the compliance agreement or similar document proposed by the division and comply with its terms may request a hearing consistent with 74-2-12 NMSA. The decision following the hearing may be appealed consistent with 74-2-9 NMSA.

F. Payment of an administrative penalty authorized by this part shall not prevent the department from taking additional enforcement actions, including suspension or revocation of a permit, if the violation is repeated or an additional violation occurs. Payment of an administrative penalty for a prior or another violation shall not be a defense to any additional action taken by the department to resolve a violation. Actions by the department may include suspension or revocation of a permit, as provided by 72-2-12 NMSA, and issuance of a stop work order.

G. The department may issue a stop work order, which shall be effective 24 hours after the person, permittee, owner, operator, or responsible person or official named in a valid permit receives the stop work order, unless an earlier deadline for stopping work or other activities is imposed by the department for good reason. The stop work order shall remain in effect until the person, permittee, owner, operator, or responsible person or official named in a valid permit demonstrates to the satisfaction of the department that the property and activities of the person, permittee, owner, operator or responsible person or official named in a valid permit shall comply with the provisions of this part.

[20.11.20.27 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.28 PUBLIC OUTREACH AND TRAINING: The department shall provide or approve public education regarding reducing fugitive dust, and the department shall implement a program to provide training at no cost to individuals who are or may in the future be required to comply with provisions of this part. Approximately twice per year, the department shall provide or approve training workshops on fugitive dust and its control to persons who conduct or participate in projects involving active operations or any other interested person. When a person attends the training and successfully passes a test, the department or approved trainer shall certify that the

person has successfully completed the training and provide documentation that the person is certified. Certifications shall be valid for two years.

[20.11.20.28 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

20.11.20.29 COMPLAINTS: The department shall respond to complaints from residents, businesses and others in a timely manner, but in no case shall the initial response be made in less than 30 days.

[20.11.20.29 NMAC - Rp, 20 NMAC 11.20. II.2 - 9, 3/1/04]

HISTORY OF 20.11.20 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

Regulation No. 8, Airborne Particulate Matter, filed 3/24/82.

Regulation No. 8, Airborne Particulate Matter, filed 2/17/83.

History of Repealed Material: 20 NMAC 11.20, Airborne Particulate Matter (filed 5/29/96); repealed 3/1/04.

Other History: Regulation No. 8, Airborne Particulate Matter; filed 2/17/83 was renumbered and reformatted into first version of the New Mexico Administrative Code as 20 NMAC 11.20, Airborne Particulate Matter, effective 12/01/95.

20 NMAC 11.20, Airborne Particulate Matter, filed 10/27/95 replaced by 20 NMAC 11.20, Airborne Particulate Matter, effective 07/01/96.

20 NMAC 11.20, Airborne Particulate Matter, filed 5/29/96 renumbered, reformatted and replaced by 20.11.20 NMAC, Fugitive Dust Control, effective 3/1/04.